

Notice of Allowability

Application No.

10/633,843

Examiner

Terra C. Gibbs

Applicant(s)

BENNETT ET AL.

Art Unit

1635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to Applicant's Amendment and Remarks filed June 8, 2006.
2. ☒ The allowed claim(s) is/are 1,2,4-10,12-14 and 21-30.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|----------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892) | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 6. <input type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date _____. |
| 3. <input checked="" type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date <u>June 8 and 9, 2006</u> | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9. <input type="checkbox"/> Other _____. |

EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Colleen McKiernan on June 21, 2006.

The application has been amended as follows:

In the Claims:

In claim 1, "a" was replaced with "the" in line 2.

In claim 21, "antisense oligonucleotide" was replaced with "antisense compound" in line 1.

In claim 21, "a" was replaced with "the" in line 2.

In claim 29, "claim 22" was replaced with "claim 28" in line 1.

In claim 30, "claim 22" was replaced with "claim 28" in line 1.

REASONS FOR ALLOWANCE

The following is an Examiner's Statement of reasons for the indication of allowable subject matter: The closest prior art is that of Rossau et al. [U.S. Patent No. 5,536,638] ('638).

Rossau et al., '638 discloses primer pairs which can be used in PCR reactions for the amplification of fragments spanning the spacer region between the 16S and 23S rRNA genes. Specifically, '638 discloses a primer with the following sequence:

5'-cacgtccttcgtcgctt-3' (see SEQ ID NO:102). It is noted that SEQ ID NO:102 disclosed by Rossau et al. contains each a 4- and 5- nucleobase portion of SEQ ID NO:13 as there is a mismatch in the middle of the alignment.

In the Office Action mailed April 5, 2005, claims 1, 2, 12, and 14 were rejected under 35 U.S.C. 102(b) as being anticipated by Rossau et al. [U.S. Patent No. 5,536,638] ('638). After reconsideration of the claims, and after considering Applicant's Remarks filed June 8, 2006, the Examiner has decided to withdraw this rejection. Specifically, the Examiner is withdrawing this rejection since the primer disclosed by Rossau et al. contains each a 4- and 5- nucleobase portion of SEQ ID NO:13 and not an 8-nucleobase portion of SEQ ID NO:13 as recited in claim 21.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

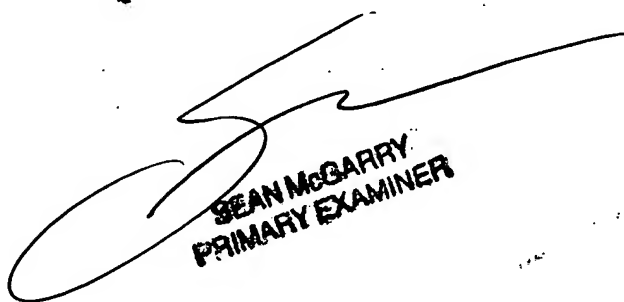
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Terra C. Gibbs whose telephone number is 571-272-0758. The examiner can normally be reached on 9 am - 5 pm M-F.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Paras can be reached on 571-272-4517. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

tcg
June 21, 2006



SEAN MCGARRY
PRIMARY EXAMINER